



Revenue Ruling 2004-6

Rev. Rul. 2004-6; 2004-1 C.B. 328; 2003 IRB LEXIS 511; 2004-4 I.R.B. 328

January 26, 2004

[*1]

SUBJECT MATTER: -Political Organizations

SUMMARY:

The IRS provided guidance on whether certain public advocacy activities by organizations exempt from federal income tax under § 501 (a) as organizations described in § 501 (c) (4), § 501 (c) (5), or § 501 (c) (6), met the definition of political campaign activity. A union's advertisement urging people to call state senators on an issue was not an exempt function under § 527 (e) (2) because it did not indicate whether a senator's candidacy for reelection should be supported or opposed based on the issue. A trade association's advertisement stating that increased international trade was important to a certain state was not an exempt function under § 527 (e) (2) because a senate candidate identified in the advertisement was a government official who could take action on the issue in connection with a vote on legislation. An advertisement by an entity that advocated for better health care was for an exempt function under § 527 (e) (2) because it identified a senator's position on a hospital funding issue as agreeing with the entity's position, and it was not part of an ongoing series of similar advocacy by the entity on the same issue.

APPLICABLE SECTIONS:

↓Section 527. Political Organizations
↓26 CFR 1.527-2: Definitions. (Also § 501.)

TEXT:

Public advocacy; public policy issues. This ruling concerns certain public advocacy activities conducted by social welfare organizations, unions and trade associations. The guidance clarifies the tax implications of advocacy that meets the definition of political campaign activity.

Organizations that are exempt from federal income tax under § 501 (a) as organizations described in § 501 (c) (4), § 501 (c) (5), or § 501 (c) (6) may, consistent with their exempt purpose, publicly advocate positions on public policy issues. This advocacy may include lobbying for legislation consistent with these positions. Because public policy advocacy may involve discussion of the positions of public officials who are also candidates for public office, a public policy advocacy communication may constitute an exempt function within the meaning of § 527 (e) (2). If so, the organization would be subject to tax under § 527 (f).

ISSUE

In each of the six situations described below, has the organization exempt from federal income tax under § 501 (a) as an organization described in § 501 (c) (4), § 501 (c) (5), or § 501 (c) (6) that engages in **[*2]** public policy advocacy expended funds for an exempt function as described in § 527 (e) (2)?

LAW

Section 501 (c) (4) provides exemption from taxation for civic leagues or organizations not organized for profit, but operated exclusively for the promotion of social welfare.

Section 1.501 (c) (4)-1 of the Income Tax Regulations states an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community.

Section 501 (c) (5) provides exemption from taxation for labor, agricultural, or horticultural organizations.

Section 1.501(c)(5)-1 requires that labor, agricultural, or horticultural organizations have as their objects the betterment of the conditions of those engaged in such pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.

Section 501 (c) (6) provides exemption from taxation for business leagues, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 provides that a business league **[*3]** is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. A business league's activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

Section 527 generally provides that political organizations that collect and expend monies for exempt function purposes as described in § 527 (e) (2) are exempt from Federal income tax except on their investment income.

Section 527 (e) (1) defines a political organization as a party, committee, association, fund or other organization (whether or not incorporated), organized and operated primarily for the purpose of accepting contributions or making expenditures, or both, for an exempt function.

Section 527 (e) (2) provides that the term "exempt function" for purposes of § 527 means the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, **[*4]** or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed. By its terms, § 527 (e) (2) includes all attempts to influence the selection, nomination, election, or appointment of the described officials.

Section 527 (f) (1) provides that an organization described in § 501 (c) and exempt from tax under § 501 (a) is subject to tax on any amount expended for an exempt function described in § 527 (e) (2) at the highest tax rate specified in § 11 (b). The tax is imposed on the lesser of the net investment income of the organization for the taxable year or the amount expended on an exempt function during the taxable year. A § 501 (c) organization is taxed under § 527 (f) (1) only if the expenditure is from its general treasury rather than from a separate segregated fund described in § 527 (f) (3).

Section 527 (f) (3) provides that if an organization described in § 501 (c) and exempt from tax under §

501 (a) sets up a separate segregated fund (which segregates monies for § 527 (e) (2) exempt function purposes) that fund will be treated as a separate political organization described in § 527 and, therefore, be subject **[*5]** to tax as a political organization under § 527.

Section 527 (i) provides that, in order to be tax-exempt, a political organization is required to give notice that it is a political organization described in § 527, unless excepted. An organization described in § 501 (c) that does not set up a separate segregated fund, but makes exempt function expenditures subject to tax under § 527 (f) is not subject to this requirement. § 527 (i) (5) (A).

Section 527 (j) provides that, unless excepted, a tax-exempt political organization that has given notice under § 527 (i) and does not timely make periodic reports of contributions and expenditures, or that fails to include the information required, must pay an amount calculated by multiplying the amount of contributions and expenditures that are not disclosed by the highest corporate tax rate. An organization described in § 501 (c) that does not set up a separate segregated fund, but makes exempt function expenditures subject to tax under § 527 (f), is not subject to the reporting requirements under § 527 (j).

Section 1.527-2 (c) (1) provides that the term "exempt function" includes all activities that are directly related to and support the process of influencing **[*6]** or attempting to influence the selection, nomination, election, or appointment of any individual to public office or office in a political organization. Whether an expenditure is for an exempt function depends on all the facts and circumstances.

Section 1.527-6 (f) provides that an organization described in § 501 (c) that is exempt under § 501 (a) may, if it is consistent with its exempt status, establish and maintain a separate segregated fund to receive contributions and make expenditures in a political campaign.

Rev. Rul. 2003-49, 2003-20 I.R.B. 903 (May 19, 2003), discusses the reporting and disclosure requirements for political organizations in question and answer format. In Q&A-6, the ruling holds that while a § 501 (c) organization that makes an expenditure for an exempt function under § 527 (e) (2) is not required to file the notice required under § 527 (i), if the § 501 (c) organization establishes a separate segregated fund under § 527 (f) (3), that fund is required to file the notice in order to be tax-exempt unless it meets one of the other exceptions to filing.

Certain broadcast, cable, or satellite communications that meet the definition of "electioneering communications" are regulated **[*7]** by the Bipartisan Campaign Reform Act of 2002 (BCRA), 116 Stat. 81. An exempt organization that violates the regulatory requirements of BCRA may well jeopardize its exemption or be subject to other tax consequences.

ANALYSIS OF FACTUAL SITUATIONS

An organization exempt from federal income tax under § 501 (a) as an organization described in § 501 (c) that, consistent with its tax-exempt status, wishes to engage in an exempt function within the meaning of § 527 (e) (2) may do so with its own funds or by setting up a separate segregated fund under § 527 (f) (3). If the organization chooses to establish a separate segregated fund, that fund, unless excepted, must give notice under § 527 (i) in order to be tax-exempt. A separate segregated fund that has given notice under § 527 (i) is then subject to the reporting requirements under § 527 (j). See Rev. Rul. 2003-49. If the organization chooses to use its own funds, the organization is not subject to the notice requirements under § 527 (i) and the reporting requirements under § 527 (j), but is subject to tax under § 527 (f) (1) on the lesser of its investment income or the amount of the exempt function expenditure.

All the facts and circumstances must **[*8]** be considered to determine whether an expenditure for an advocacy communication relating to a public policy issue is for an exempt function under § 527 (e) (2).

When an advocacy communication explicitly advocates the election or defeat of an individual to public office, the expenditure clearly is for an exempt function under § 527 (e) (2). However, when an advocacy communication relating to a public policy issue does not explicitly advocate the election or defeat of a candidate, all the facts and circumstances need to be considered to determine whether the expenditure is for an exempt function under § 527 (e) (2).

In facts and circumstances such as those described in the six situations, factors that tend to show that an advocacy communication on a public policy issue is for an exempt function under § 527 (e) (2) include, but are not limited to, the following:

- a)

The communication identifies a candidate for public office;

- b)

The timing of the communication coincides with an electoral campaign;

- c)

The communication targets voters in a particular election;

- d)

The communication identifies that candidate's position on the public policy issue that is the subject of the communication;

- e)

The position of **[*9]** the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications; and

- f)

The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue.

In facts and circumstances such as those described in the six situations, factors that tend to show that an advocacy communication on a public policy issue is not for an exempt function under § 527 (e) (2) include, but are not limited to, the following:

- a)

The absence of any one or more of the factors listed in a) through f) above;

- b)

The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence;

- c)

The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication);

- d)

The communication identifies the candidate solely as a government **[*10]** official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation); and

- e)

The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication.

In all of the situations, the advocacy communication identifies a candidate in an election, appears shortly before that election, and targets the voters in that election. Even though these factors are present, the remaining facts and circumstances must be analyzed in each situation to determine whether the advocacy communication is for an exempt function under § 527 (e) (2).

Each of the situations assumes that:

- 1.

All payments for the described activity are from the general treasury of the organization rather than from a separate segregated fund under § 527 (f) (3);

- 2.

The organization would continue to be exempt under § 501 (a), even if the described activity is not a § 501 (c) exempt activity, because the organization's primary activities are described in the appropriate subparagraph of § 501 (c); and

- 3.

All advocacy communications described also include a solicitation of contributions **[*11]** to the organization.

Situation 1. *N*, a labor organization recognized as tax exempt under § 501 (c) (5), advocates for the betterment of conditions of law enforcement personnel. Senator *A* and Senator *B* represent State *U* in the United States Senate. In year 200x, *N* prepares and finances full-page newspaper advertisements supporting increased spending on law enforcement, which would require a legislative appropriation. These advertisements are published in several large circulation newspapers in State *U* on a regular basis during year 200x. One of these full-page advertisements is published shortly before an election in which Senator *A* (but not Senator *B*) is a candidate for re-election. The advertisement published shortly before the election stresses the importance of increased federal funding of local law enforcement and refers to numerous statistics indicating the high crime rate in State *U*. The advertisement does not mention Senator *A*'s or Senator *B*'s position on law enforcement issues. The advertisement ends with the statement "Call or write Senator *A* and Senator *B* to ask them to support increased federal funding for local law enforcement." Law enforcement has not been raised as an issue **[*12]** distinguishing Senator *A* from any opponent. At the time this advertisement is published, no legislative vote or other major legislative activity is scheduled in the United States Senate on increased federal funding for local law enforcement.

Under the facts and circumstances in *Situation 1*, the advertisement is not for an exempt function under § 527 (e) (2). Although *N*'s advertisement identifies Senator *A*, appears shortly before an election in which Senator *A* is a candidate, and targets voters in that election, it is part of an ongoing series of substantially similar advocacy communications by *N* on the same issue during year 200 x. The advertisement identifies both Senator *A* and Senator *B*, who is not a candidate for re-election, as the representatives who would vote on this issue. Furthermore, *A*'s advertisement does not identify Senator *A*'s position on the issue, and law enforcement has not been raised as an issue distinguishing Senator *A* from any opponent. Therefore, there is nothing to indicate that Senator *A*'s candidacy should be supported or opposed based

on this issue. Based on these facts and circumstances, the amount expended by *N* on the advertisement is not an exempt function **[*13]** expenditure under § 527 (e) (2) and, therefore, is not subject to tax under § 527 (f) (1).

Situation 2. *O*, a trade association recognized as tax exempt under § 501 (c) (6), advocates for increased international trade. Senator *C* represents State *V* in the United States Senate. *O* prepares and finances a full-page newspaper advertisement that is published in several large circulation newspapers in State *V* shortly before an election in which Senator *C* is a candidate for nomination in a party primary. The advertisement states that increased international trade is important to a major industry in State *V*. The advertisement states that S. 24, a pending bill in the United States Senate, would provide manufacturing subsidies to certain industries to encourage export of their products. The advertisement also states that several manufacturers in State *V* would benefit from the subsidies, but Senator *C* has opposed similar measures supporting increased international trade in the past. The advertisement ends with the statement "Call or write Senator *C* to tell him to vote for S. 24." International trade concerns have not been raised as an issue distinguishing Senator *C* from any opponent. S. 24 is scheduled **[*14]** for a vote in the United States Senate before the election, soon after the date that the advertisement is published in the newspapers.

Under the facts and circumstances in *Situation 2*, the advertisement is not for an exempt function under § 527 (e) (2). *O*'s advertisement identifies Senator *C*, appears shortly before an election in which Senator *C* is a candidate, and targets voters in that election. Although international trade issues have not been raised as an issue distinguishing Senator *C* from any opponent, the advertisement identifies Senator *C*'s position on the issue as contrary to *O*'s position. However, the advertisement specifically identifies the legislation *O* is supporting and appears immediately before the United States Senate is scheduled to vote on that particular legislation. The candidate identified, Senator *C*, is a government official who is in a position to take action on the public policy issue in connection with the specific event. Based on these facts and circumstances, the amount expended by *O* on the advertisement is not an exempt function expenditure under § 527 (e) (2) and, therefore, is not subject to tax under § 527 (f) (1).

Situation 3. *P*, an entity recognized as **[*15]** tax exempt under § 501 (c) (4), advocates for better health care. Senator *D* represents State *W* in the United States Senate. *P* prepares and finances a full-page newspaper advertisement that is published repeatedly in several large circulation newspapers in State *W* beginning shortly before an election in which Senator *D* is a candidate for re-election. The advertisement is not part of an ongoing series of substantially similar advocacy communications by *P* on the same issue. The advertisement states that a public hospital is needed in a major city in State *W* but that the public hospital cannot be built without federal assistance. The advertisement further states that Senator *D* has voted in the past year for two bills that would have provided the federal funding necessary for the hospital. The advertisement then ends with the statement "Let Senator *D* know you agree about the need for federal funding for hospitals." Federal funding for hospitals has not been raised as an issue distinguishing Senator *D* from any opponent. At the time the advertisement is published, a bill providing federal funding for hospitals has been introduced in the United States Senate, but no legislative vote or other **[*16]** major legislative activity on that bill is scheduled in the Senate.

Under the facts and circumstances in *Situation 3*, the advertisement is for an exempt function under § 527 (e) (2). *P*'s advertisement identifies Senator *D*, appears shortly before an election in which Senator *D* is a candidate, and targets voters in that election. Although federal funding of hospitals has not been raised as an issue distinguishing Senator *D* from any opponent, the advertisement identifies Senator *D*'s position on the hospital funding issue as agreeing with *P*'s position, and is not part of an ongoing series of substantially similar advocacy communications by *P* on the same issue. Moreover, the advertisement does not identify any specific legislation and is not timed to coincide with a legislative vote or other major legislative action on the hospital funding issue. Based on these facts and circumstances, the amount

expended by *P* on the advertisement is an exempt function expenditure under § 527 (e) (2) and, therefore, is subject to tax under § 527 (00).

Situation 4. *R*, an entity recognized as tax exempt under § 501 (c) (4), advocates for improved public education. Governor *E* is the governor of State *X*. *R* prepares **[*17]** and finances a radio advertisement urging an increase in state funding for public education in State *X*, which requires a legislative appropriation. The radio advertisement is first broadcast on several radio stations in State *X* beginning shortly before an election in which Governor *E* is a candidate for re-election. The advertisement is not part of an ongoing series of substantially similar advocacy communications by *R* on the same issue. The advertisement cites numerous statistics indicating that public education in State *X* is under-funded. While the advertisement does not say anything about Governor *E*'s position on funding for public education, it ends with "Tell Governor *E* what you think about our under-funded schools." In public appearances and campaign literature, Governor *E*'s opponent has made funding of public education an issue in the campaign by focusing on Governor *E*'s veto of an income tax increase the previous year to increase funding of public education. At the time the advertisement is broadcast, no legislative vote or other major legislative activity is scheduled in the State *X* legislature on state funding of public education.

Under the facts and circumstances in *Situation* **[*18]** 4, the advertisement is for an exempt function under § 527 (e) (2). *R*'s advertisement identifies Governor *E*, appears shortly before an election in which Governor *E* is a candidate, and targets voters in that election. Although the advertisement does not explicitly identify Governor *E*'s position on the funding of public schools issue, that issue has been raised as an issue in the campaign by Governor *E*'s opponent. The advertisement does not identify any specific legislation, is not part of an ongoing series of substantially similar advocacy communications by *R* on the same issue, and is not timed to coincide with a legislative vote or other major legislative action on that issue. Based on these facts and circumstances, the amount expended by *R* on the advertisement is an exempt function expenditure under § 527 (e) (2) and, therefore, is subject to tax under § 527 (f) (1).

Situation 5. *S*, an entity recognized as tax exempt under § 501 (c) (4), advocates to abolish the death penalty in State *Y*. Governor *F* is the governor of State *Y*. *S* regularly prepares and finances television advertisements opposing the death penalty. These advertisements appear on several television stations in State *Y* shortly **[*19]** before each scheduled execution in State *Y*. One such advertisement opposing the death penalty appears on State *Y* television stations shortly before the scheduled execution of *G* and shortly before an election in which Governor *F* is a candidate for re-election. The advertisement broadcast shortly before the election provides statistics regarding developed countries that have abolished the death penalty and refers to studies indicating inequities related to the types of persons executed in the United States. Like the advertisements appearing shortly before other scheduled executions in State *Y*, the advertisement notes that Governor *F* has supported the death penalty in the past and ends with the statement "Call or write Governor *F* to demand that he stop the upcoming execution of *G*."

Under the facts and circumstances in *Situation 5*, the advertisement is not for an exempt function under § 527 (e) (2). *S*'s advertisement identifies Governor *F*, appears shortly before an election in which Governor *F* is a candidate, targets voters in that election, and identifies Governor *F*'s position as contrary to *S*'s position. However, the advertisement is part of an ongoing series of substantially similar advocacy **[*20]** communications by *S* on the same issue and the advertisement identifies an event outside the control of the organization (the scheduled execution) that the organization hopes to influence. Further, the timing of the advertisement coincides with this specific event that the organization hopes to influence. The candidate identified is a government official who is in a position to take action on the public policy issue in connection with the specific event. Based on these facts and circumstances, the amount expended by *S* on the advertisements is not an exempt function expenditure under § 527 (e) (2) and, therefore, is not subject to tax under § 527 (f) (1).

Situation 6. *T*, an entity recognized as tax exempt under § 501 (c) (4), advocates to abolish the death penalty in State *Z*. Governor *H* is the governor of State *Z*. Beginning shortly before an election in which Governor *H* is a candidate for re-election, *T* prepares and finances a television advertisement broadcast on several television stations in State *Z*. The advertisement is not part of an ongoing series of substantially similar advocacy communications by *T* on the same issue. The advertisement provides statistics regarding developed countries [*21] that have abolished the death penalty, and refers to studies indicating inequities related to the types of persons executed in the United States. The advertisement calls for the abolishment of the death penalty. The advertisement notes that Governor *H* has supported the death penalty in the past. The advertisement identifies several individuals previously executed in State *Z*, stating that Governor *H* could have saved their lives by stopping their executions. No executions are scheduled in State *Z* in the near future. The advertisement concludes with the statement "Call or write Governor *H* to demand a moratorium on the death penalty in State *Z*."

Under the facts and circumstances in *Situation 6*, the advertisement is for an exempt function under § 527 (e) (2). *T*'s advertisement identifies Governor *H*, appears shortly before an election in which Governor *H* is a candidate, targets the voters in that election, and identifies Governor *H*'s position as contrary to *T*'s position. The advertisement is not part of an ongoing series of substantially similar advocacy communications by *T* on the same issue. In addition, the advertisement does not identify and is not timed to coincide with a specific event [*22] outside the control of the organization that it hopes to influence. Based on these facts and circumstances, the amount expended by *T* on the advertisement is an exempt function expenditure under § 527 (e) (2) and, therefore, is subject to tax under § 527 (f) (1).

HOLDINGS

In Situations 1, 2, and 5, the amounts expended by *N*, *O*, and *S* are not exempt function expenditures under § 527 (e) (2) and, therefore, are not subject to tax under § 527 (f) (1). In Situations 3, 4, and 6, the amounts expended by *P*, *R* and *T* are exempt function expenditures under § 527 (e) (2) and, therefore, are subject to tax under § 527 (f) (1).

DRAFTING INFORMATION

The principal author of this revenue ruling is Judith E. Kindell of Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this revenue ruling, contact Judith E. Kindell at (202) 283-8964 (not a toll-free call).
